



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 220831-0179]

RIN 0648-BL25

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions in Purse Seine Fisheries and 2022 Longline Bigeye Tuna Catch Limit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would modify existing limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on the high seas between the latitudes of 20° N. and 20° S., in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). In addition, this proposed rule would adjust the 2022 bigeye tuna catch limit in the area of application of the Convention (Convention Area) for U.S. longline commercial fishing vessels to 3,358 metric tons (mt), due to an overage of the 2021 catch limit. The proposed rule would clarify that adjustments to the purse seine fishing effort limits or longline bigeye tuna catch limits could occur each year, due to any overage of the prior year's limit. This proposed rule would also modify the following: the process for closing the fishery once NMFS expects the effort limits will be reached; the process for obtaining daily purse seine fishing effort reports; and the process for adjusting established annual catch and effort limits in the Convention Area. This action is necessary for the United States to implement provisions of a conservation and

management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party. NMFS is seeking comments on this proposed rule and will respond to those comments in a subsequent final rule.

DATES: Comments on the proposed rule must be submitted in writing by *[Insert date 20 days after date of publication in the FEDERAL REGISTER]*.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA-NMFS-2022-0082 by any of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0082 in the Search box. Click on the “Comment” icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah Malloy, Acting Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.
- *Fax:* (808) 725-5215; Attn: Sarah Malloy.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (*e.g.*, name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR and the 2015 programmatic environmental assessment (PEA), 2021 supplemental environmental assessment, and 2022 Supplemental Information Report prepared for National Environmental Policy Act (NEPA) purposes are available at www.regulations.gov or may be obtained from Sarah Malloy, Acting Regional Administrator, NMFS PIRO (see address above).

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808-725-5033.

SUPPLEMENTARY INFORMATION:

Background on the Convention

The Convention is concerned with the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission, which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA; 16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention,

including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

Background on WCPFC Decisions on Tropical Tunas and NMFS Rules

At its Fourteenth Regular Session, in December 2017, the Commission adopted Conservation and Management Measure (CMM) 2017-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2017-01 included provisions for purse seine fishing effort limits, restrictions on the use of fish aggregating devices (FAD) for purse seine fishing vessels, specific catch retention provisions for purse seine fishing vessels, and longline bigeye tuna catch limits, among others. At its Fifteenth Regular Session, in December 2018, the Commission adopted Conservation and Management Measure (CMM) 2018-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean,” which replaced CMM 2017-01 but included similar provisions. CMM 2018-01 went into effect on February 13, 2019, and remained in effect until February 10, 2021. At its Seventeenth Regular Session, in December 2020, the Commission adopted CMM 2020-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean,” which are identical to those of 2018-01, and were in effect until February 15, 2022. At its

Eighteenth Regular Session, in December 2021, the Commission adopted CMM 2021-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean,” which is effective until February 15, 2024. These and other CMMs are available at: www.wcpfc.int/conservation-and-management-measures. NMFS has implemented through other rulemakings the other relevant provisions of CMM 2021-01.¹ The previous rules pertinent to the measure’s purse seine fishing effort limits and longline bigeye tuna catch limits are described below.

Purse seine fishing effort limits.

By interim final rule published in the **Federal Register** on July 31, 2019, NMFS implemented CMM 2018-01’s provisions regarding the limits on fishing effort by U.S. purse seine vessels in the U.S. EEZ and on the high seas between the latitudes of 20° N. and 20° S. in the Convention Area (see 84 FR 37145; hereafter 2019 interim final rule). In that rule, NMFS established a combined limit on fishing effort by U.S. purse seine vessels in the Effort Limit Area for Purse Seine (or ELAPS, which comprises the areas of the high seas and U.S. EEZ between 20° N. latitude and 20° S. latitude in the Convention Area) of 1,828 fishing days² per year for 2020 and subsequent years. These regulations are in effect until they are amended, replaced, or repealed (see 50 CFR 300.223(a)).

CMM 2021-01 and its predecessor CMMs include language that requires any overage of an annual purse seine fishing effort limit to be deducted from the limit for the following year. As stated in the 2019 interim final rule, NMFS combined the purse seine fishing effort limits for the U.S. EEZ and the high seas, consistent with previous rulemakings. For 2019, the interim final rule established a limit of 1,616 fishing days

¹ NMFS has undertaken a rulemaking to implement the provisions on non-entangling fish aggregating devices (FADs) included in CMM 2018-01 (see 86 FR 55790; published October 7, 2021). NMFS plans to undertake a separate rulemaking to implement the new non-entangling FAD provisions included in CMM 2021-01.

² Fishing day means, for fishing vessels equipped with purse seine gear, any day in which a fishing vessel searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch (50 CFR 300.211).

(558 fishing days from the U.S. EEZ limit plus 1,270 days from the high seas limit less the 212 fishing day overage of the 2018 high seas limit) for the ELAPS. For 2020 and subsequent years, the 2019 interim final rule established a limit of 1,828 fishing days per calendar year for the ELAPS.

In 2020, the U.S. purse seine fleet used 126 fishing days in the U.S. EEZ and 1,659 fishing days in the high seas, and in 2021, the fleet used 118 fishing days in the U.S. EEZ and 733 fishing days in the high seas. Thus, the fleet did not exceed the ELAPS limit established by NMFS or the WCPFC-specified U.S. EEZ limit in either 2020 or 2021. However, in 2020, the fleet did exceed the WCPFC-specified high seas fishing day limit by 329 fishing days. Thus, the WCPFC-specified fishing day limit for U.S. purse seine vessels on the high seas in 2021 was 1,270 fishing days minus the 329 fishing day overage, or 881 fishing days. As stated, the U.S. purse seine fleet used 773 fishing days on the high seas in 2021 – fewer fishing days than 881 fishing days.

NMFS is issuing this proposed rule to amend the existing regulations to establish separate purse seine fishing effort limits for the U.S. EEZ and for the high seas. The limit for the U.S. EEZ established by the Commission in CMM 2021-01 is 558 fishing days per year. The limit for the high seas established by the Commission in CMM 2021-01 is 1,270 fishing days per year. NMFS has established combined limits for the ELAPS in previous years to provide increased operational flexibility to the U.S. purse seine fleet fishing in the WCPO. In the past, NMFS combined the limits because it provided for operational flexibility while having the same overall impact on the stock. However, other WCPFC members have vigorously objected to the U.S. approach, and NMFS acknowledges that the plain text of the CMM establishes separate U.S. EEZ and high seas limits. NMFS also notes that there are significantly fewer licensed U.S. vessels operating under these limits, reducing the risk that separate limits will be exceeded. Without necessarily conceding that the CMM prohibits a member's discretion to enforce a

combined limit provided that the total amount harvested does not exceed the sum of the EEZ and high seas limits, NMFS declines to depart from the plain language of the CMM. Accordingly, NMFS proposes to establish separate U.S. EEZ and high seas limits. NMFS would implement the limits in this proposed rule to remain effective until they are replaced or amended.

NMFS is also implementing the overage provision in CMM 2021-01 by including specific regulatory language indicating that NMFS would adjust the annual U.S. EEZ and high seas purse seine fishing effort limits each year to account for any overage of the limits in the previous year.

Longline bigeye tuna catch limits.

By final rule published in the **Federal Register** on July 18, 2018 (83 FR 33851), NMFS implemented the longline bigeye tuna catch limit specified in CMM 2017-01 for U.S. commercial fishing vessels fishing in the Convention Area. The limit is 3,554 mt of bigeye tuna per year for longline fishing vessels of the United States (see 50 CFR 300.224(a)). The limit has remained the same in the more recent WCPFC decisions on tropical tunas, and is the same under the tropical tunas decision currently in effect – CMM 2021-01. Under WCPFC decisions on tropical tunas, if the limit is exceeded in a given year, the following year's limit must account for that overage (see CMM 2021-01 at Paragraph 37). The 2021 U.S. longline bigeye tuna catch in the Convention Area was 3,750 mt or 196 mt over the catch limit. Thus, under this proposed rule, the 2022 U.S. longline bigeye tuna catch limit in the Convention Area would be adjusted to 3,358 mt. The limit for 2023 and future years would be maintained at 3,554 mt. However, NMFS is also implementing the overage provision in CMM 2021-01 by including specific regulatory language indicating that NMFS would adjust the annual limit in each year to account for any overage of the previous year's limit.

Background on Other Elements of this Rule

Process for announcing purse seine fishery closure

Currently, NMFS estimates the number of fishing days spent on the high seas and in the U.S. EEZ by the U.S. purse seine fleet in each calendar year using logbooks and other available information. If NMFS determines that the fishing day limit is going to be reached in any given year, NMFS will issue a closure notice and U.S. purse seine vessels will be prohibited from fishing in those areas for the remainder of the calendar year. Existing regulations under 50 CFR 300.223(a) establish that NMFS will publish the closure notice in the **Federal Register** at least seven calendar days in advance of the closure date. This proposed rule would modify the existing regulations.

This proposed rule would amend the existing regulations to remove the requirement for NMFS to publish the fishery closure notice in the **Federal Register** seven days in advance of a closure. Instead, NMFS would publish the annual limits and estimates of the fishing effort on a NMFS web page on a periodic basis, and use the web page as well as direct email communication with vessel owners to provide notification of a fishery closure. NMFS would publish a notification of the fishery closure in the **Federal Register** as soon as possible. The details of this element of the proposed rule are included in the description of the proposed action section below. By reducing the administrative time necessary to publish in the **Federal Register** 7 days in advance of a closure and the specific time needed for advance notice to industry, NMFS would be able to more closely align the closure date to the date the limit is actually reached, thereby reducing the magnitude of overages (in the case of exceeding the limit upon the closure date) and underages (in the case of not reaching the limit upon the closure date).

As stated in existing regulations at 50 CFR 300.223(a)(4), starting on the announced closure date, and for the remainder of calendar year, it would be prohibited for U.S. purse seine vessels to fish in the U.S. EEZ or the high seas, except that such vessels

would not be prohibited from bunkering during the closure. This proposed rule would not affect the prohibitions in place once the U.S. EEZ or high seas is closed.

Daily purse seine fishing effort reports

The regulations at 50 CFR 300.218(g) states as follows: if directed by NMFS, the owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS, in a specified format and manner, the activity of the vessel in the Convention Area³ (e.g., setting, transiting, searching), location and type of set, if a set was made during that day. NMFS has been directing vessel owners or operators to provide these daily purse seine fishing effort reports for a number of years in order to collect data to better track purse seine fishing effort limits. Because NMFS believes that these reports provide valuable information on purse seine fishing effort, NMFS is proposing to require vessel owners/operators to provide daily fishing effort reports (instead of only when directed by NMFS). However, the current directive to provide these reports requires vessel owners and operators to provide these reports continually, so in practice, this element of the rule would not affect what vessel owners and operators are currently doing.

Use of framework process to adjust catch and effort limits

As discussed above, NMFS is implementing the overage provisions of CMM 2021-01 for the purse seine fishing effort limits and the longline bigeye tuna catch limits in the regulations at 50 CFR 300.223(a) and 50 CFR 300.224(a), respectively. NMFS would adjust these limits downward in a given year to account for overages of the prior year's limits. The regulations at 50 CFR 300.227 set forth a framework process through which NMFS may specify particular WCPFC catch and effort limits on an annual basis. Under the process, NMFS may publish a notice of the catch or effort limit in the **Federal**

³ This requirement does not apply to the area of overlapping jurisdiction between the WCPFC and the Inter-American Tropical Tuna Commission.

Register for public comment instead of modifying existing codified regulations or issuing new regulations, which allows NMFS to implement such limits more quickly. Limits established under that process must remain in effect for less than one year. Under this proposed rule, NMFS would modify the regulations at 50 CFR 300.227 so that adjustments to codified catch or fishing effort limits in the Convention Area on an annual basis would be made through the framework process specified in those regulations. NMFS would also clarify that limits established through that framework process must remain in effect for less than one year. This modification would allow NMFS to adjust existing catch and effort limits on an annual basis to account for overages of such limits in prior years.

The Action

This proposed rule includes the following elements: (1) modification of purse seine fishing effort limits; (2) adjustment to the 2022 longline bigeye tuna catch limits; (3) modification of the process for closing the purse seine fishery once an effort limit is reached; (4) modification of the purse seine daily fishing effort reporting requirements, and (5) modification of the regulations at 50 CFR 300.227 to include annual adjustments to existing catch and effort limits.

Purse Seine Fishing Effort Limits

This proposed rule would establish a limit of 558 fishing days for the U.S. EEZ and 1,270 fishing days for the high seas for 2022 and subsequent years. These limits are subject to adjustment under the procedures in 300.227(f) for any overage of a previous year's limits.

2022 Longline Bigeye Tuna Catch Limit

This proposed rule would adjust the longline bigeye tuna catch limits for 2022 to 3,358 mt. The limit for 2023 and future years would remain at 3,554 mt. That limit is

subject to adjustment under the procedures in 200.227(f) for any overage of a previous year's limit.

Purse Seine Fishery Closure Procedure

This proposed rule would amend the existing regulations at 50 CFR 300.223(a)(3) to remove the requirement for NMFS to publish the fishery closure notice in the **Federal Register** 7 days in advance of a closure. NMFS intends to publish the annual limits and estimates of the fishing effort expended on a NMFS website and provide updates on a periodic basis. Under this proposed rule, once NMFS determines that a limit is expected to be reached, NMFS would post the notice on a NMFS web page⁴ announcing the fishery closure date and would also email notice of the closure date to affected vessel owners reducing the processing time for announcing the closure. NMFS also would publish the closure notice in the **Federal Register**, as soon as practicable. The closure would be effective upon the earlier of either (1) receipt by email of such notice, or (2) publication in the **Federal Register**.

As stated in existing regulations at 50 CFR 300.223(a)(4), starting on the announced closure date, and for the remainder of calendar year, it would be prohibited for U.S. purse seine vessels to fish in the U.S. EEZ or the high seas, except that such vessels would not be prohibited from bunkering during the closure. This proposed rule would not affect the prohibitions in place once the U.S. EEZ or high seas is closed.

Changes to Daily Purse Seine Fishing Effort Reporting Requirements

As described above, under this proposed rule, NMFS proposes to modify the language in 50 CFR 300.218(g) so that the daily purse seine fishing effort reporting would be required. However, the current directive to provide these reports requires vessel

⁴ See <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/fishing-effort-limits-purse-seine-western-and-central-pacific-ocean>.

owners and operators to provide these reports continually, so in practice, this element of the rule would not affect what vessel owners and operators are currently doing.

Changes to the Regulations at 50 CFR 300.227

Under this proposed rule, NMFS would modify the regulations at 50 CFR 300.227 so that the framework process to issue catch and effort limits would be used to adjust codified catch and effort limits that implement WCPFC decisions, as appropriate. Under the process, NMFS would publish a notice of the adjusted catch or effort limit in the **Federal Register** for public comment instead of modifying existing codified regulations or issuing new regulations. NMFS would also modify the regulations at 50 CFR 300.227 to clarify that any limits established under the framework process must remain in effect for less than one year.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this proposed rule is consistent with the WCPFC Implementation Act and other applicable laws, subject to further consideration after public comment.

Coastal Zone Management Act (CZMA)

NMFS determined that implementation of the purse seine fishing effort limits, modifications to the process for closing the fishery once an effort limit is reached, and modifications to the process related to collecting daily purse seine fishing effort reports are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. Determinations to Hawaii, American Samoa, CNMI and Guam were submitted on March 23, 2022, for review by the responsible state and territorial agencies under section 307 of the CZMA.

The state of Hawaii responded by letter dated March 28, 2022, that for this particular proposal, because the U.S. WCPO purse seine fishery operates outside of the

jurisdiction of Hawaii CZM Program enforceable policies, it would not be responding to the consistency determination. In addition, the state of Hawaii agreed to an alternative Federal consistency notification schedule that ended on the date of the March 28, 2022, letter. CNMI provided concurrence with the consistency determination on April 28, 2022.

NMFS determined that the U.S. longline bigeye tuna catch limit of 3,554 mt was consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, CNMI, Guam, and the State of Hawaii in 2018 when it established this limit (83 FR 33851; July 18, 2018). NMFS received no objections from the state/territorial agencies on this determination. Because the adjustment to the limit under this proposed rule would not lead to any new effects on coastal areas or resources than what were evaluated in the 2018 consistency determinations, no new determinations have been prepared for this element of the proposed rule.

Modifications to the framework process in the regulations at 50 CFR 300.227 would be administrative in nature and not expected to cause any effects on coastal areas or resources.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act (RFA)

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the Convention Area, including longline vessels (except those operating as part of the longline fisheries of American Samoa, CNMI, or Guam) and purse seine vessels. The estimated number of affected fishing vessels is 151 longline and 15 purse seine vessels, and is based on the number of vessels with those vessel types that hold WCPFC Area Endorsements, which are required to fish on the high seas of the Convention Area, as of May 2, 2022.

Based on (limited) financial information about the affected fishing fleet, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline vessels and 80 percent of the vessels in the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of average revenue, by vessel, for 2019-2021 reveals that average annual revenue among vessels in the fleet was about \$8 million (NMFS unpublished data combined with price data from <https://www.ffa.int/node/425> and https://investor.thaiunion.com/raw_material.html accessed on March 23, 2022), and 12 participating vessels qualified as small entities, with estimated vessel revenue of less than \$11 million (based on the average revenue across the most recent three years for which data is available).

Recordkeeping, Reporting, and Other Compliance Requirements

The elements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill the requirements are listed below for each element:

(1) Purse seine fishing effort limits

There would be annual limits of 1,270 and 558 fishing days on the high seas and in the U.S. EEZ, respectively, in the Convention Area.

Fulfillment of this element's requirements is not expected to necessitate any professional skills that the vessel owners and operators do not already possess. The costs of complying with the requirements are described below to the extent possible.

Regarding the fishing effort limits, if and when the fishery on the high seas or in the U.S. EEZ is closed as a result of a limit being reached in any year, owners and operators of U.S. purse seine vessels would have to cease fishing in that area for the remainder of the calendar year. Closure of the fishery in either of those areas could thereby result in foregone fishing opportunities and associated economic losses if the area contains preferred fishing grounds during such a closure. Historical fishing rates in the two areas give a rough indication of the likelihood of the limits being reached.

From 2009 through 2021, no more than 41 percent of the proposed limit of 558 fishing days was ever used in the U.S. EEZ. This history suggests a relatively low likelihood of the proposed EEZ limit being reached in a given year. Furthermore, in 2018, when separate limits were established for the EEZ and high seas, fishing day usage in the U.S. EEZ declined, but did not differ significantly from previous years. Approximately 60 percent of the fleet is authorized to fish in the U.S. EEZ. Six of the 13 vessels currently licensed under the South Pacific Tuna Treaty (SPTT)⁵ have fishery endorsements on their U.S. Coast Guard Certificates of Documentation, which are

⁵ The majority of U.S. purse seine fishing activity in the Convention Area takes place in the waters of Pacific Island Parties to the SPTT (PIPs), pursuant to the terms of the SPTT.

required to fish in the U.S. EEZ, and both of the other two purse seine vessels that hold WCPFC Area Endorsements but do not have South Pacific Tuna Treaty licenses have fishery endorsements. With a separate limit for the U.S. EEZ, these eight vessels of the fleet could take advantage of fishing in the U.S. EEZ more than they have in the past if the high seas are closed to fishing in a given year.

Regarding effort in the high seas from 2009 through 2021, between 33 and 145 percent of the proposed limit of 1,270 fishing days was used, and at least 100 percent was used in seven of the thirteen years. In 3 years, 2015, 2016, and 2019 the high seas and U.S. EEZ was closed for part of the year (from June 15 to December 31 in 2015, from September 2 to December 31 in 2016, and from October 9-November 28 and from December 9 to December 31 in 2019) and in 2018, the high seas was closed for part of the year (from September 18 to December 31), so more fishing effort might have occurred in those 4 years were there no limits. In the years that both the high seas and U.S. EEZ were closed, it is possible that some or all of any additional fishing effort might have occurred in the U.S. EEZ rather than on the high seas. Given that the fleet generally uses far fewer fishing days in the U.S. EEZ, it is more likely that most or all of any additional effort would have occurred on the high seas instead of in the U.S. EEZ. This history suggests a substantial likelihood of the proposed high seas limit being reached in a given year. However, the fleet has undergone a steep reduction in size in recent years, and is currently at 15 vessels, a level that is less than half its 2019 size of 33 vessels. NMFS believes the vessels that were previously in the fleet reflagged to other nations for business reasons. This reduction in fleet size increases the number of fishing days available on the high seas for the remaining vessels, and could reduce the likelihood of the proposed high seas limit being reached in any a given year. In 2021, 18 purse seine vessels fished in the Convention Area, and fishing effort in the high seas was 773 fishing days, well below the proposed separate high seas limit of 1,270 fishing days, suggesting a

lower likelihood of the proposed limit being reached in any a given year. However, the separate limits that would be implemented under this proposed rule would remove the operational flexibility provided under the combined limits currently in place and increase the possibility of a limit being reached or reached earlier in the year.

Two factors could have a substantial influence on the amount of fishing effort in the U.S. EEZ and on the high seas in a given year: First, the number of fishing days available in foreign waters (the fleet's main fishing grounds) pursuant to the SPTT will influence the incentive to fish outside those waters, including the U.S. EEZ and high seas. Second, El Niño—Southern Oscillation (ENSO) conditions will influence where the best fishing grounds are.

Regarding fishing opportunities in foreign waters, in December 2016, the United States and PIPs agreed upon a revised SPTT, and under this agreement U.S. purse seine fishing businesses can purchase fishing days in the EEZs of the PIPs. There are limits on the number of such “upfront” fishing days that may be purchased. These limits can influence the amount of fishing in other areas, such as the U.S. EEZ and the high seas, as well as the eastern Pacific Ocean (EPO). For example, if the number of available upfront fishing days is relatively small, fishing effort in the U.S. EEZ and/or high seas might be relatively great. In fact, the number of upfront days available for the Kiribati EEZ, which has traditionally constituted important fishing grounds for the U.S. fleet, is notably small—only 300 fishing days per year. However, the SPTT provides for U.S. purse seine fishing businesses to purchase “additional” fishing days through direct bilateral agreements with the PIPs. NMFS cannot project how many additional days will be purchased in any given year, so cannot gauge how the limits on upfront days might influence fishing effort in the U.S. EEZ or on the high seas. Limits on upfront days are therefore not considered here any further.

Regarding ENSO conditions, the eastern areas of the WCPO tend to be comparatively more attractive to the U.S. purse seine fleet during El Niño events, when warm surface water spreads from the western Pacific to the eastern Pacific and large, valuable yellowfin tuna become more vulnerable to purse seine fishing and trade winds lessen in intensity. Consequently, the U.S. EEZ and high seas, much of which is situated in the eastern range of the fleet's fishing grounds, is likely to be more important fishing grounds to the fleet during El Niño events (as compared to neutral or La Niña events). This is supported by there being a statistically significant correlation between annual average per-vessel fishing effort in the ELAPS and the Oceanic Niño Index, a common measure of ENSO conditions, from 2001-2021.

El Niño conditions were present in 2015 and in the first half of 2016, and might have contributed to the relatively high rates of fishing in the U.S. EEZ and high seas in those years. As of March 10, 2022, La Niña conditions were present, and the National Weather Service forecasts that La Nina will continue with about a 50 percent probability during June - August 2022, with a 40-50% chance of La Nina or ENSO-neutral conditions thereafter. Thus ENSO conditions might have a negative influence on fishing in the U.S. EEZ and the high seas in 2022. The influence of ENSO conditions on fishing effort in future years cannot be predicted with any certainty.

Another potentially important factor is that the U.S. EEZ and high seas limits would be competitive limits, so their establishment could cause a "race to fish" in the two areas. That is, vessel operators might seek to take advantage of the limited number of fishing days available in the areas before the limits are reached, and fish harder in the high seas or the U.S. EEZ than they would if there were no limits or if there were a combined U.S. EEZ and high seas limit. On the one hand, any such race-to-fish effect might be reflected in the history of fishing in the high seas and U.S. EEZ, described above. On the other hand, anecdotal information from the fishing industry suggests that

the limits might have been internally allocated by the fleet, which might have tempered any race to fish. It is not known whether the industry intends to internally allocate the proposed limits.

In summary, although difficult to predict, either the U.S. EEZ or high seas limits could be reached in any given year, especially the high seas limits. If either limit is reached in a given year, the fleet would be prohibited from fishing in that area for the remainder of the calendar year.

The closure of any fishing grounds for any amount of time can be expected to bring adverse impacts to affected entities (*e.g.*, because the open area might, during the closed period, be less productive than the closed area, and vessels might use more fuel and spend more time having to travel to open areas). The severity of the impacts of a closure would depend greatly on the length of the closure and where the most favored fishing grounds are during the closure. A study by NMFS (Chan, V. and D. Squires. 2016. Analyzing the economic impacts of the 2015 ELAPS closure. NMFS Internal Report) estimated that the overall losses to the combined sectors of the vessels, canneries and vessel support companies from the 2015 ELAPS closure ranged from \$11 million and \$110 million depending on the counterfactual period considered. These results suggest that there were impacts from the ELAPS closure on the American Samoa economy through impacts to the canneries and vessel support companies and a connection between U.S. purse seine vessels and the broader American Samoa economy. If there was a closure of the U.S. EEZ or high seas in the WCPO, it is likely there would be impacts to the American Samoa economy though the magnitude would depend on the length of the closure, and whether both or just one of the areas was closed to fishing.

If either the U.S. EEZ or high seas is closed, possible next-best opportunities for U.S. purse seine vessels fishing in the WCPO include fishing in the other of the two

areas, fishing in foreign EEZs inside the Convention Area, fishing outside the Convention Area in EPO, and not fishing.

With respect to fishing in the U.S. EEZ or on the high seas: If the U.S. EEZ were closed, the high seas would be available to the fleet until its limit is reached. If the high seas were closed, the U.S. EEZ would be available until its limit is reached, but only for the vessels with fishery endorsements on their Certificates of Documentation (currently 8, including 6 vessels with SPTT licenses and two additional vessels without).

With respect to fishing in the Convention Area in foreign EEZs: As described above, under the SPTT the fleet might have substantial fishing days available in the PIP EEZs that dominate the WCPO, but it is not possible to predict how many fishing days will be available to the fleet as a whole or to individual fishing businesses.

With respect to fishing in the EPO: The fleet has generally increased its fishing operations in the EPO since 2014, and as of 2021, there were 13 purse seine vessels in the WCPO fleet that are also listed on the Inter-American Tropical Tuna Commission (IATTC) Vessel Register. In order to fish in the EPO, a vessel must be on the IATTC's Regional Vessel Register and categorized as active (50 CFR 300.22(b)), which involves fees of about \$14.95 per cubic meter of well space per year (*e.g.*, a vessel with 1,200 m³ of well space would be subject to annual fees of \$17,940). (As an exception to this rule, an SPTT-licensed vessel is allowed to make one fishing trip in the EPO each year without being categorized as active on the IATTC Regional Vessel Register. The trip must not exceed 90 days in length, and there is an annual limit of 32 such trips for the entire SPTT-licensed fleet (50 CFR 300.22(b)(1)).) The number of U.S. purse seine vessels in the WCPO fleet that have opted to be categorized as active on the IATTC Regional Vessel Register has increased in the last few years from zero to 17, probably largely a result of constraints on fishing days in the WCPO and/or uncertainty in future access arrangements under the SPTT. This suggests an increasing attractiveness of fishing in the

EPO, in spite of the costs associated with doing so. However, vessels probably will not have the opportunity to fish in the EPO year-round. To implement a recent decision of the IATTC, NMFS has published a final rule (87 FR 40731, July 8, 2022) that requires purse seine vessels to choose between two 72-day EPO fishing prohibition periods each year: July 29-October 8 or November 9-January 19. Thus, the opportunity to fish in the EPO might be constrained, depending on when the U.S. EEZ and/or high seas in the WCPFC Area is closed, and which EPO closure period a given vessel operator chooses.

Not fishing at all during a closure of the U.S. EEZ or high seas would mean a loss of any revenues from fishing. However, many of the vessels' variable operating costs would be avoided in that case, and it is possible that for some vessels a portion of the time might be used for productive activities like vessel and equipment maintenance.

The opportunity costs of engaging in next-best opportunities in the event of a closure are not known, so the potential impacts cannot be quantified. However, to give an indication of the magnitude of possible economic impacts to the fleet and an upper bound of those impacts, information on revenue per day is provided here.

The most recent 3 years for which catch estimates for the U.S. WCPO purse seine fleet are available are 2019-2021. Those estimates, adjusted to an indicative fleet size of 15 vessels, equate to annual average catches of skipjack tuna, yellowfin tuna, and bigeye tuna of 68,818 mt, 8,737 mt, and 6,087 mt, respectively, or 83,641 mt in total. Applying the 2020 Bangkok cannery price of \$1,359 per mt for skipjack tuna and bigeye tuna and a 2019 Bangkok cannery price of \$1,682 mt for yellowfin tuna (FFA 2020), the value of annual fleet-wide catches at 2019-2021 average levels would be about \$116 million. It should be noted that cannery prices are fairly volatile; for example, cannery prices in 2017 were substantially higher than prices during the previous three years.

In addition to the effects described above, the proposed limits could affect the temporal distribution of fishing effort in the U.S. purse seine fishery. Since the limits

would apply fleet-wide—that is, they would not be allocated to individual vessels—vessel operators might have an incentive to fish harder in the affected areas earlier in each calendar year than they otherwise would. To the extent such temporal shifts occur, they could affect the seasonal timing of fish catches and deliveries to canneries. The timing of cannery deliveries by the U.S. fleet alone (as it might be affected by a race to fish in the EEZ or high seas) is unlikely to have an appreciable impact on prices because many canneries in the Asia-Pacific region and elsewhere buy from the fleets of multiple nations. A race to fish could bring costs to affected entities if it causes vessel operators to forego vessel maintenance in favor of fishing or to fish in weather or ocean conditions that they otherwise would not. This could bring costs in terms of the health and safety of the crew as well as the economic performance of the vessel.

(2) Longline bigeye tuna catch limits

This element of the proposed rule would not establish any new reporting or recordkeeping requirements. The new proposed compliance requirement would be for affected vessel owners and operators to cease retaining, landing, and transshipping bigeye tuna caught with longline gear in the Convention Area if and when the bigeye tuna catch limit of 3,358 mt (3,554 mt reduced by the 196 mt overage from 2021) is reached in 2022, for the remainder of the calendar year, subject to the exceptions specified at 50 CFR 300.224. These exceptions include the following: bigeye tuna landed in Guam, American Samoa, or CNMI; bigeye tuna caught by vessels with American Samoa Longline Limited Access Permits; and bigeye tuna caught by vessels in specified fishing agreements under 50 CFR 665.801.

Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess. The costs of complying with this requirement are described below to the extent possible.

Complying with this element of the proposed rule could cause foregone fishing opportunities and result in associated economic losses in the event that the bigeye tuna catch limit is reached in 2022 and the restrictions on retaining, landing, and transshipping bigeye tuna are imposed for a portion of that year. These costs cannot be projected quantitatively with any certainty. The proposed annual limit of 3,358 mt can be compared to catches in 2005-2008, before limits were in place. The average annual catch in that period was 4,709 mt. Based on that history, as well as fishing patterns in 2009-2021, when limits were in place, there appears to be a relatively high likelihood of the proposed limits being reached in 2022. In 2019, for example, which saw exceptionally high catches of bigeye tuna, the limit of 3,554 mt was estimated to have been reached by, and the fishery was closed on, July 27 (see temporary rule published July 24, 2019; 84 FR 35568). In 2020, the limit of 3,554 mt was estimated to have been reached by September 1, 2020, and in 2021, the limit of 3,554 mt was estimated to have been reached by September 6, 2021. Thus, if bigeye tuna catch patterns in 2022 are like those in 2005-2008, the limit would be reached in the fourth quarter of the year, and if they are like those in 2019, 2020, or 2021, the limit would be reached in the third quarter of the year.

If the bigeye tuna limit is reached before the end of 2022 and the Convention Area longline bigeye tuna fishery is consequently closed for the remainder of the calendar year, it can be expected that affected vessels would shift to the next most profitable fishing opportunity (which might be not fishing at all). Revenues from that next best alternative activity reflect the opportunity costs associated with longline fishing for bigeye tuna in the Convention Area. The economic cost of the proposed rule would not be the direct losses in revenues that would result from not being able to fish for bigeye tuna in the Convention Area, but rather the difference in benefits derived from that activity and those derived from the next best activity. The economic cost of the proposed rule on affected entities is examined here by first estimating the direct losses in

revenues that would result from not being able to fish for bigeye tuna in the Convention Area as a result of the catch limit being reached. Those losses represent the upper bound of the economic cost of the proposed rule on affected entities. Potential next-best alternative activities that affected entities could undertake are then identified in order to provide a (mostly qualitative) description of the degree to which actual costs would be lower than that upper bound.

Upper bounds on potential economic costs can be estimated by examining the projected value of longline landings from the Convention Area that would not be made as a result of reaching the limit. For this purpose, it is assumed that, absent this proposed rule, bigeye tuna catches in the Convention Area in 2022 would be 3,554 mt, the bigeye tuna limit currently in place. Under this scenario, imposition of a limit of 3,358 mt would result in 6 percent less bigeye tuna being caught in 2022 than under no action. In the deep-set fishery, catches of marketable species other than bigeye tuna would likely be affected in a similar way if vessels do not shift to alternative activities. Assuming for the moment that ex-vessel prices would not be affected by a fishery closure, under the proposed rule, revenues in 2022 to entities that participate exclusively in the deep-set fishery would be approximately 6 percent less than under no action. Average annual ex-vessel revenues (from all species) per mt of bigeye tuna caught during 2018-2020 were about \$13,740/mt (in 2020 dollars, derived from the latest available annual report on the pelagic fisheries of the western Pacific Region (Western Pacific Regional Fishery Management Council, 2021, Annual Stock Assessment and Fishery Evaluation Report: 2020. Honolulu, Western Pacific Fishery Management Council; <https://www.wpcouncildata.org/pelagicsafereport/>). Applying the average ex-vessel revenues (from all species) of \$13,740 per mt of bigeye tuna caught, the estimated reductions in ex-vessel revenue from a 196 mt decrease in the bigeye catch limit would be approximately \$14,000 for 2022 or on average a reduction of \$95 per vessel.

In the shallow-set fishery, affected entities would bear limited costs in the event of the limit being reached (but most affected entities also participate in the deep-set fishery and might bear costs in that fishery, as described below). The cost would be about equal to the revenues lost from not being able to retain or land bigeye tuna captured while shallow-setting in the Convention Area, or the cost of shifting to shallow-setting in the EPO, which is to the east of 150 degrees W. longitude, whichever is less. In the fourth calendar quarters of 2019-2021, almost all shallow-setting effort took place in the EPO, and 91 percent of bigeye tuna catches were made there, so the cost of a bigeye tuna fishery closure to shallow-setting vessels would appear to be very limited. During 2019-2021, the shallow-set fishery caught an average of 15 mt of bigeye tuna per year from the Convention Area. If the proposed bigeye tuna catch limit is reached even as early as July 31 in 2022, the Convention Area shallow-set fishery would have caught at that point, based on 2019-2022 data, on average, 94 percent of its average annual bigeye tuna catches. Imposition of the landings restriction at that point in 2022 would result in the loss of revenues from approximately 0.9 mt (6 percent of 15 mt) of bigeye tuna, which, based on recent ex-vessel prices, would be worth no more than \$5,700. Thus, expecting about 13 vessels to engage in the shallow-set fishery (the annual average in 2019-2021), the average of those potentially lost annual revenues would be no more than \$436 per vessel. The remainder of this analysis focuses on the potential costs of compliance in the deep-set fishery.

It should be noted that the impacts on affected entities' profits would be less than impacts on revenues when considering the costs of operating vessels, because costs would be lower if a vessel ceases fishing after the catch limit is reached. Variable costs can be expected to be affected roughly in proportion to revenues, as both variable costs and revenues would stop accruing once a vessel stops fishing. But affected entities' costs also include fixed costs, which are borne regardless of whether a vessel is used to fish—

e.g., if it is tied up at the dock during a fishery closure. Thus, profits would likely be adversely impacted proportionately more than revenues.

As stated previously, actual compliance costs for a given entity might be less than the upper bounds described above, because ceasing fishing would not necessarily be the most profitable alternative opportunity when the catch limit is reached. Two alternative opportunities that are expected to be attractive to affected entities include: 1) deep-set longline fishing for bigeye tuna in the Convention Area in a manner such that the vessel is considered part of the longline fishery of American Samoa, Guam, or the CNMI; and 2) deep-set longline fishing for bigeye tuna and other species in the EPO. These two opportunities are discussed in detail below. Four additional opportunities are: 3) shallow-set longline fishing for swordfish (for deep-setting vessels that would not otherwise do so), 4) deep-set longline fishing in the Convention Area for species other than bigeye tuna, 5) working in cooperation with vessels operating as part of the longline fisheries of the Participating Territories – specifically, receiving transshipments at sea from them and delivering the fish to the Hawaii market, and 6) vessel repair and maintenance. A study by NMFS of the effects of the WCPO bigeye tuna longline fishery closure in 2010 (Richmond, L., D. Kotowicz, J. Hospital and S. Allen, 2015, Monitoring socioeconomic impacts of Hawai‘i’s 2010 bigeye tuna closure: Complexities of local management in a global fishery, *Ocean & Coastal Management* 106:87-96) did not identify the occurrence of any alternative activities that vessels engaged in during the closure, other than deep-setting for bigeye tuna in the EPO, vessel maintenance and repairs, and granting lengthy vacations to employees. Based on those findings, NMFS expects that alternative opportunities 3), 4), and 5) are probably unattractive relative to the first two alternatives, and are not discussed here in any further detail. NMFS recognizes that vessel maintenance and repairs and granting lengthy vacations to employees are two alternative activities that might be taken advantage of if the fishery is closed, but no further analysis

of their mitigating effects is provided here, because costs would likely be similar or greater of those anticipated if the vessel chose to cease fishing.

Before examining in detail the two potential alternative fishing opportunities that would appear to be the most attractive to affected entities, it is important to note that under the proposed rule, once the limit is reached and the WCPO bigeye tuna fishery is closed, fishing with deep-set longline gear both inside and outside the Convention Area during the same trip would be prohibited (except in the case of a fishing trip that is in progress when the limit is reached and the restrictions go into effect). For example, after the restrictions go into effect, during a given fishing trip, a vessel could be used for longline fishing for bigeye tuna in the EPO or for longline fishing for species other than bigeye tuna in the Convention Area, but not for both. This reduced operational flexibility would bring costs, since it would constrain the potential profits from alternative opportunities. Those costs cannot be quantified.

A vessel could take advantage of the first alternative opportunity (deep-setting for bigeye tuna in a manner such that the vessel is considered part of the longline fishery of one of the three U.S. Participating Territories), by three possible methods : a) landing the bigeye tuna in one of the three Participating Territories, b) holding an American Samoa Longline Limited Access Permit, or c) being considered part of a Participating Territory's longline fishery, by agreement with one or more of the three Participating Territories under the regulations implementing Amendment 7 to the Pelagics FEP (50 CFR 665.819). In the first two circumstances, the vessel would be considered part of the longline fishery of the Participating Territory only if the bigeye tuna were not caught in the portion of the U.S. EEZ around the Hawaiian Islands and were landed by a U.S. vessel operating in compliance with a permit issued under the regulations implementing the Pelagics FEP or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species.

With respect to the first method of engaging in alternative opportunity 1 (1.a.) (landing the bigeye tuna in one of the Participating Territories), there are three potentially important constraints. First, whether the fish are landed by the vessel that caught the fish or by a vessel to which the fish were transshipped, the costs of a vessel transiting from the traditional fishing grounds in the vicinity of the Hawaiian Archipelago to one of the Participating Territories would be substantial. Second, none of these three locales has large local consumer markets to absorb substantial additional landings of fresh sashimi-grade bigeye tuna. Third, transporting the bigeye tuna from these locales to larger markets, such as markets in Hawaii, the U.S. west coast, or Japan, would bring substantial additional costs and risks. These cost constraints suggest that this alternative opportunity has limited potential to mitigate the economic impacts of the proposed rule on affected small entities.

The second method of engaging in the first alternative opportunity (1.b.) (having an American Samoa Longline Limited Access Permit), would be available only to the subset of the Hawaii longline fleet that has both Hawaii and American Samoa longline permits (dual permit vessels). Vessels that do not have both permits could obtain them if they meet the eligibility requirements and pay the required costs. For example, the number of dual permit vessels increased from 12 in 2009, when the first WCPO bigeye tuna catch limit was established, to 27 from 2018-2020, and was 25 in 2021. The previously cited NMFS study of the 2010 fishery closure (Richmond *et al.* 2015) found that bigeye tuna landings of dual permit vessels increased substantially after the start of the closure on November 22, 2010, indicating that this was an attractive opportunity for dual permit vessels, and suggesting that those entities might have benefitted from the catch limit and the closure.

The third method of engaging in the first alternative opportunity (1.c.) (entering into an Amendment 7 agreement), was also available in 2011-2021 (in 2011-2013, under

section 113(a) of Public Law 112-55, 125 Stat. 552 *et seq.*, the Consolidated and Further Continuing Appropriations Act, 2012, continued by Public Law 113-6, 125 Stat. 603, section 110, the Department of Commerce Appropriations Act, 2013; hereafter, “section 113(a)”). As a result of agreements that were in place in 2011-2014, the WCPO bigeye tuna fishery was not closed in any of those years. In 2015-2019 the fishery was closed but then reopened when agreements went into effect. Agreements were also in place in 2020 and 2021. The fishery did not close in 2020, but the bigeye catch limit was exceeded in 2021. Participation in an Amendment 7 agreement would likely not come without costs to fishing businesses. As an indication of the possible cost, the terms of the agreement between American Samoa and the members of the Hawaii Longline Association (HLA) in effect in 2011 and 2012 included payments totaling \$250,000 from the HLA to the Western Pacific Sustainable Fisheries Fund, equal to \$2,000 per vessel. It is not known how the total cost was allocated among the members of the HLA, so it is possible that the owners of particular vessels paid substantially more than or less than \$2,000.

The second alternative opportunity (2) (deep-set fishing for bigeye tuna in the EPO), would be an option for affected entities only if it is allowed under regulations implementing the decisions of the IATTC. NMFS has issued a final rule to implement the IATTC’s most recent resolution on the management of tropical tuna stocks (87 FR 40731, July 8, 2022). The proposed rule would establish an annual limit of 750 mt on the catch of bigeye tuna in the EPO by vessels at least 24m in length per calendar year. Annual longline bigeye tuna catch limits have been in place for the EPO in most years since 2004. Since 2009, when the limit was 500 mt, it was reached in 2013 (November 11), 2014 (October 31), and 2015 (August 12). In 2016 NMFS forecasted that the limit would be reached July 25 and subsequently closed the fishery, but later determined that the catch limit had not been reached and re-opened the fishery on October 4, 2016 (81 FR

69717). In 2017, NMFS forecasted that the limit would be reached by September 8 and subsequently closed the fishery (82 FR 41562). The limit was not reached in 2018-2021.

The highly seasonal nature of bigeye tuna catches in the EPO and the relatively high inter-annual variation in catches prevents NMFS from making a useful prediction of whether and when the EPO limit in 2022 is likely to be reached. If it is reached, this alternative opportunity would not be available for large longline vessels, which constitute about a quarter of the fleet.

Historical fishing patterns can provide an indication of the likelihood of affected entities making use of the opportunity of deep-setting in the EPO in the event of a closure in the WCPO. The proportion of the U.S. fishery's annual bigeye tuna catches that were captured in the EPO from 2005 through 2008 ranged from 2 percent to 22 percent, and averaged 11 percent. In 2005-2007, that proportion ranged from 2 percent to 11 percent, and may have been constrained by the IATTC-adopted bigeye tuna catch limits established by NMFS (no limit was in place for 2008). Prior to 2009, most of the U.S. annual bigeye tuna catch by longline vessels in the EPO typically was made in the second and third quarters of the year; in 2005-2008 the percentages caught in the first, second, third, and fourth quarters were 14, 33, 50, and 3 percent, respectively. These data demonstrate two historical patterns – that relatively little of the bigeye tuna catch in the longline fishery was typically taken in the EPO (11 percent in 2005-2008, on average), and that most EPO bigeye tuna catches were made in the second and third quarters, with relatively few catches in the fourth quarter when the proposed catch limit would most likely be reached. These two patterns suggest that there could be substantial costs for at least some affected entities that shift to deep-set fishing in the EPO in the event of a closure in the WCPO. On the other hand, fishing patterns since 2008 suggest that a substantial shift in deep-set fishing effort to the EPO could occur. In 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020 and 2021 the proportions of the

fishery's annual bigeye tuna catches that were captured in the EPO were about 16, 27, 22, 18, 35, 35, 46, 36, 48, 42, 33, 29 and 28 percent, respectively, and most bigeye tuna catches in the EPO were made in the latter half of the calendar years.

The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that some businesses—particularly those with smaller vessels—were less inclined than others to fish in the EPO during the closure because of the relatively long distances that would need to be travelled in the relatively rough winter ocean conditions. The study identified a number of factors that likely made fishing in the EPO less lucrative than fishing in the WCPO during that part of the year, including fuel costs and the need to limit trip length in order to maintain fish quality and because of limited fuel storage capacity.

In addition to affecting the volume of landings of bigeye tuna and other species, the proposed catch limits could affect fish prices, particularly during a fishery closure. Both increases and decreases appear possible. After a limit is reached and landings from the WCPO are prohibited, ex-vessel prices of bigeye tuna (*e.g.*, that are caught in the EPO or by vessels in the longline fisheries of the three U.S. Participating Territories), as well as of other species landed by the fleet, could increase as a result of the constricted supply. This would mitigate economic losses for vessels that are able to continue fishing and landing bigeye tuna during the closure. For example, the NMFS study of the 2010 closure (Richmond *et al.* 2015) found that ex-vessel prices during the closure in December were 50 percent greater than the average during the previous five Decembers. (It is emphasized that because it was an observational study, neither this nor other observations of what occurred during the closure can be affirmatively linked as effects of the fishery closure.)

Conversely, a WCPO bigeye tuna fishery closure could cause a decrease in ex-vessel prices of bigeye tuna and other products landed by affected entities if the interruption in the local supply prompts the Hawaii market to shift to alternative (*e.g.*,

imported) sources of bigeye tuna. Such a shift could be temporary—that is, limited to 2022—or it could lead to a more permanent change in the market (e.g., as a result of wholesale and retail buyers wanting to mitigate the uncertainty in the continuity of supply from the Hawaii longline fisheries). In the latter case, if locally caught bigeye tuna fetches lower prices because of stiffer competition with imported bigeye tuna, then ex-vessel prices of local product could be depressed indefinitely. The NMFS study of the 2010 closure (Richmond *et al.* 2015) found that a common concern in the Hawaii fishing community prior to the closure in November 2010 was retailers having to rely more heavily on imported tuna, causing imports to gain a greater market share in local markets. The study found this not to have been borne out, at least not in 2010, when the evidence gathered in the study suggested that few buyers adapted to the closure by increasing their reliance on imports, and no reports or indications were found of a dramatic increase in the use of imported bigeye tuna during the closure. The study concluded, however, that the 2010 closure caused buyers to give increased consideration to imports as part of their business model, and it was predicted that tuna imports could increase during any future closure. To the extent that ex-vessel prices would be reduced by this action, revenues earned by affected entities would be affected accordingly, and these impacts could occur both before and after the limit is reached, and as described above, possibly after 2022.

The potential economic effects identified above would vary among individual business entities, but it is not possible to predict the range of variation. Furthermore, the impacts on a particular entity would depend on both that entity's response to the proposed rule and the behavior of other vessels in the fleet, both before and after the catch limit is reached. For example, the greater the number of vessels that take advantage — before the limit is reached — of the first alternative opportunity (1), fishing as part of one of the Participating Territory's fisheries, the lower the likelihood that the limit would be reached. The fleet's behavior in 2011 and 2012 is illustrative. In both those years, most

vessels in the Hawaii fleet were included in a section 113(a) arrangement with the government of American Samoa, and as a consequence, the U.S. longline catch limit was not reached in either year. Thus, none of the vessels in the fleet, including those not included in the section 113(a) arrangements, were prohibited from fishing for bigeye tuna in the Convention Area at any time during those two years. The fleet's experience in 2010 (before opportunities under section 113(a) or Amendment 7 to the Pelagics FEP were available) provides another example of how economic impacts could be distributed among different entities. In 2010 the limit was reached and the WCPO bigeye tuna fishery was closed on November 22. As described above, dual permit vessels were able to continue fishing outside the U.S. EEZ around the Hawaiian Archipelago and benefit from the relatively high ex-vessel prices that bigeye tuna fetched during the closure.

In summary, based on potential reductions in ex-vessel revenues, NMFS has estimated that the upper bound of potential economic impacts of the proposed rule on affected longline fishing entities could be roughly \$531 per vessel per year, on average. The actual impacts to most entities are likely to be substantially less than those upper bounds, and for some entities the impacts could be neutral or positive (*e.g.*, if one or more Amendment 7 agreements are in place in 2022 and the terms of the agreements are such that the U.S. longline fleet is effectively unconstrained by the catch limits).

(3) Daily purse seine fishing effort reports

This element of the proposed rule would require submission of the existing "Daily purse seine fishing effort reports." Fulfillment of this element's proposed requirements is not expected to necessitate any professional skills that the vessel owners and operators do not already possess. NMFS has intermittently directed vessel owners and operators to provide this information since September 6, 2018. This modification is not expected to change costs of compliance that have been previously analyzed (see 83 FR 33851; July

18, 2018). The estimated cost and burden of this reporting requirement is discussed further in the Paperwork Reduction Act (PRA) section below.

(4) Purse seine fishery closure notification

This element of the proposed rule would not establish any new reporting or recordkeeping requirements nor is it expected to change the costs of compliance.

(5) Changes to the Regulations at 50 CFR 300.227

This element of the proposed rule would not establish any new reporting or recordkeeping requirements nor is it expected to change the costs of compliance.

Disproportionate Impacts

There would be no disproportionate economic impacts between small and large entities operating vessels resulting from this rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear or homeport.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that duplicate, overlap with, or conflict with the proposed regulations.

Alternatives to the Proposed Rule

NMFS has sought to identify alternatives that would minimize the proposed rule's economic impacts on small entities ("significant alternatives"). Taking no action, where no action is defined as no purse seine effort limits or bigeye tuna catch limits in place could result in lesser adverse economic impacts than the proposed action for affected entities, but NMFS does not prefer the no-action alternative, because it would be inconsistent with the United States' obligations under the Convention. Taking no action, where no action is defined as leaving the combined purse seine fishing effort limits in place and not adjusting the 2022 longline bigeye tuna catch limit to account for the overage of the limit in 2021, could also result in lesser adverse economic impacts than the proposed action for affected entities, but NMFS believes the modifications are necessary

to better fulfill the United States' obligations under the Convention. Alternatives to the proposed rule are discussed below.

1. Purse Seine fishing effort limits

NMFS has established combined limits for the ELAPS in previous years to provide increased operational flexibility to the U.S. purse seine fleet fishing in the WCPO. Although NMFS has proposed to establish separate U.S. EEZ and high seas limits, as discussed throughout this document, NMFS has analyzed the environmental and economic impacts of implementation of the combined limit in the supporting documents issued in conjunction with this proposed rule. NMFS invites the public to submit comments on the economic impact of its proposal to separate the limits.

2. Longline bigeye tuna catch limits

NMFS has not identified any significant alternatives for this element of the proposed rule, other than the two no-action alternative described above (either no limit in place or the existing limit of 3,554 mt). NMFS has considered the economic impacts of the two no-action alternatives in the RIR being issued with this rule. As stated above, the no-action alternatives could result in lesser adverse economic impacts than the proposed action for affected entities, because there would either be no limit in place or a greater limit in place. NMFS believes implementation of the adjusted 2022 longline bigeye tuna catch limit is necessary to better fulfill the United States' obligations under the Convention.

Paperwork Reduction Act

NMFS previously conducted an estimate of the cost and burden of submitting daily purse seine effort reports in the Convention Area under Control Number 0648-0649, Transshipment Requirements under the WCPFC. NMFS estimated that the cost and burden of submitting a daily report would include 10 minutes maximum to complete the form and \$4.07 per submission. In this proposed rule, NMFS would codify the

requirement to submit daily purse seine effort reports, instead of only requiring them “as directed.” Because NMFS has been directing vessel owners and operators to submit these daily reports, this proposed rule would not introduce any new costs or burdens beyond what has already been evaluated under Control Number 0648-0649.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: September 2, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

§ 300.211 [Amended]

2. In § 300.211, remove the definition for “*Effort Limit Area for Purse Seine, or ELAPS*”.

3. In § 300.218, revise paragraph (g) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

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(g) **Daily purse seine fishing effort reports.** The owner or operator of any fishing vessel of the United States equipped with purse seine gear must report to NMFS within 24 hours of the end of each day that the vessel is at sea in the Convention Area, except for within the Overlap Area, the activity of the vessel (*e.g.*, setting, transiting, searching), location and type of set, if a set was made during that day. The report must be made in the format specified by the Pacific Islands Regional Administrator.

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4. Amend § 300.223 by removing and reserving paragraph (a)(1), and revising paragraphs (a)(2), and (3) to read as follows:

§ 300.223 Purse seine fishing restrictions.

* * * * *

(a) * * *

(1) [Reserved]

(2) There is a limit of 558 fishing days in the EEZ and 1,270 fishing days on the high seas per calendar year. These limits are subject to adjustment if exceeded in the previous year. NMFS will use the procedures for specifying limits set forth at § 300.227(f) to account for an overage of these limits in the following year's limits, as appropriate.

(3) NMFS will determine the number of fishing days spent in the EEZ and on the high seas in each calendar year using data submitted in logbooks and other available information. NMFS will publish the annual limits and estimates of the fishing effort on the following web page <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/fishing-effort-limits-purse-seine-western-and-central-pacific-ocean> on a periodic basis. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, NMFS will post a notice on the web page, announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed

and will remain closed until the end of the calendar year. NMFS will simultaneously email letters of the fishery closure to affected vessel owners. This action will also be published in the **Federal Register** as soon as practicable. The fishery closure will be effective upon the earlier of either (1) receipt by email of such notice, or (2) publication in the **Federal Register**.

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5. In § 300.224, revise paragraphs (a)(1), (2), and add paragraph (a)(3) to read as follows:

§ 300.224 Longline fishing restrictions.

* * * * *

(a) * * *

(1) Except as modified by § 300.227 or provided in § 300.224(a)(2) below, there is a limit of 3,554 metric tons of bigeye tuna per calendar year that may be captured in the Convention Area by longline gear and retained on board by fishing vessels of the United States.

(2) For calendar year 2022, the limit in paragraph (a)(1) of this section is adjusted to 3,358 metric tons.

(3) The limits in § 300.224 (a)(1) and § 300.224 (a)(2) are subject to adjustment if exceeded in the previous year. NMFS will use the procedures for specifying limits set forth at § 300.227(f) to account for an overage of the limits in paragraphs (a)(1) or (2) of this section in the following year's limit, as appropriate.

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6. In § 300.227, add paragraphs (i) and (j) to read as follows:

§ 300.227 Framework for catch and fishing effort limits.

* * * * *

(i) NMFS will use the procedures for specifying limits set forth at § 300.227(f) to account for an overage of the limits established in § 300.223 and § 300.224 in the following year's limits, as appropriate.

(j) The limits established through the process detailed in paragraph (f) of this section may remain in effect for a period less than one year.

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